



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/165011

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on April 22, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the Petitioner is liable for an overpayment of child care benefits in the amount of \$2,677.97 for the period of February 23, 2014 through January 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On November 1, 2013, the Petitioner's adoption of her child became final. (Testimony of Petitioner; Exhibit 4)

3. The Petitioner timely reported this change to the agency on November 4, 2013. (Testimony of Petitioner; Exhibit 4)
4. The agency did not act on the reported change. (Testimony of Ms. Mayer)
5. On or about February 13, 2015, the agency discovered that it failed to act on the reported adoption. Had it done so, it would have begun counting Petitioner's income when determining her eligibility for childcare benefits. (Testimony of Ms. Mayer; Exhibit 3)
6. On March 2, 2015, the agency sent the Petitioner a manual Child Care Client Overpayment Notice, indicating that due to agency error, she had been overpaid childcare benefits in the amount of \$2,677.97 for the period of February 23, 2014 through January 31, 2015. This notice included an overpayment worksheet. (Exhibit 1)
7. Also on March 2, 2015, the agency sent the Petitioner an automated Child Care Overpayment Notice (Claim [REDACTED]), indicating that she was overpaid childcare benefits in the amount of \$2,677.97 for the period of February 23, 2014 to January 31, 2015. (Exhibit 5)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 31, 2015. (Exhibit 1)
9. On April 2, 2015, the agency sent the Petitioner a repayment agreement. (Exhibit 7)

DISCUSSION

An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than he or she is entitled to receive. *Wisconsin Shares Child Care Assistance Manual (CCM)* §2.1.5.1. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §2.5.0.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

Further, liability extends to, "any parent, not-marital co-parent, or stepparent whose family received benefits under...49.155 [Wisconsin Shares] during the period he or she is an adult member of the same household." Wis. Admin. Code §DCF 101.23(3)(a)

In the case at hand, it is undisputed that the agency caused the overpayment. Prior to November 1, 2014, the Petitioner's child was a foster child. "Foster parents and subsidized guardians who need childcare for their foster care children are not required to provide their own income information if they are only applying for Wisconsin Shares child care assistance." *CCM* §1.11.1.1 As such, the agency did not count/verify the Petitioner's income when determining eligibility.

In November 2013, the Petitioner reported her adoption of her child. Because the child was no longer a foster child, all of the Petitioner's available income needed to be counted and verified in determining eligibility for child care. See *CCM* §1.6.0 et al. The agency failed to do this, thus creating the subject overpayment.

The Petitioner did not dispute the agency's calculation of what the Wisconsin Shares program actually paid her daycare provider – the “net issued amount”. (See Exhibit 1 and 6). Indeed, her witness, Jamie Brands, an agent of the daycare, confirmed that the daycare received payments in the amounts listed.

The Petitioner did not dispute the agency's calculation of what the Wisconsin Shares program should have paid the provider, had it correctly counted her income – the “new net amount”. As such, it is found that the agency correctly determined that the Petitioner was overpaid childcare benefits in the amount of \$2,677.97 for the period of February 23, 2014 to January 31, 2015. (See Exhibit 1 and 6)

What Petitioner disputes, is her liability for the overpayment. Petitioner argues 1) that she should not be forced to payback any amounts paid to the daycare as a YoungStar bonus, 2) that she did not actually receive the money; that the daycare has the money and should give it back, and 3) Petitioner argues that she should not be forced to repay an overpayment of benefits caused by agency error and that the agency is at even greater fault for the overpayment, because, had the Petitioner been a private pay client, she would have only had to pay \$45.00 per week for child care. Petitioner argues that it is the program's fault that it actually paid three times more than private pay parents.

YoungStar Payment Increase

The YoungStar program is administered by the Wisconsin Shares program. It is a five star quality rating and improvement system intended to provide childcare providers with an incentive to improve the quality of childcare and to encourage the professional development of providers. It is also meant to be a tool that allows parents to compare the quality of available childcare.

If a childcare provider participates in the YoungStar program, the payments it receives for the child care services it provides is increased or decreased by a certain percentage, depending upon that childcare provider's rating. For further information, the parties may refer to the YoungStar Frequently Asked Questions sheet found at:

http://dcf.wisconsin.gov/youngstar/pdf/ys_faq/ys_faq.pdf

Petitioner has not cited to any statute, administrative rule, or policy provision to support the contention that incorrect amounts paid to a daycare provider as a YoungStar bonus are not recoverable from a Wisconsin Shares recipient.

On the contrary, Wis. Admin. Code §DCF 101.23(1) (g) defines an overpayment as, “any benefit or payment received under s. [49.148](#), [49.155](#) [Wisconsin Shares Child Care Subsidy], [49.157](#), or [49.19](#), Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation”

The words, “any benefit or payment” may be reasonably construed to include YoungStar payments made on behalf of a Wisconsin Shares benefit recipient.

Further, Wis. Admin. Code §DCF 201.04(5)(a)2., states that, “an overpayment shall include excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care benefit or ineligibility for a child care benefit due to any reason....”

Again, in the absence of any law or policy to the contrary, the phrase “excess childcare funds” may be reasonably construed to include funds paid to providers for YoungStar payments.

Based upon the foregoing, it is found that YoungStar bonuses that are paid in error, are recoverable as part of a childcare overpayment.

The Daycare's Receipt of the Money

The Petitioner asserts that she should not be forced to repay the state for the erroneously issued childcare benefits, because she never actually received the money; it was paid directly to her daycare provider. Under this reasoning, the agency should be pursuing the daycare for the overpayment; since it is the daycare that is in the best position to return the money that it received in error.

One can't help but wonder why the daycare provider did not mention to the Petitioner, the consistent payments it was receiving, even after the Petitioner adopted her child. If the daycare provider is as knowledgeable about the Wisconsin Shares Program as it holds out, one would think it would have expected a lower payment after the adoption and alerted the Petitioner to the fact that something was wrong, instead of continuing to accept the overpayments. Indeed, given the Petitioner's testimony that she is employed at the daycare, one would think the daycare provider would have been aware of when the Petitioner adopted her child.

However, the fact remains that the benefit was paid on the Petitioner's behalf and the administrative rules make clear that parents are liable for overpayments of childcare benefits. As cited above, under Wis. Admin. Code §DCF 101.23(3)(a) liability for an overpayment of childcare benefits extends, "to any parent, non-marital co-parent, or stepparent whose family received benefits under...49.155 [Wisconsin Shares] during the period he or she is an adult member of the same household."

If Petitioner believes the daycare provider should be held accountable, she will have to take the matter up in civil court and file suit against the daycare provider.

Agency Error

Petitioner's argument that she should not be forced to repay an overpayment of benefits caused by agency error is based in equity; that is what the Petitioner believes to be fair. However, it has been well established that administrative law judges do not have equitable authority, but must apply the law as it is written:

See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985). "As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978).)

According to Wis. Stat. §49.195(3) and Wis. Admin. Code §§DCF 101.23(1)(g) and (3), 201.04(5)(a) and 201.04(5)(a)2., the Petitioner is liable for any overpayment of benefits, even one caused by agency error.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner is liable for an overpayment of child care benefits in the amount of \$2,677.97 for the period of February 23, 2014 through January 31, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

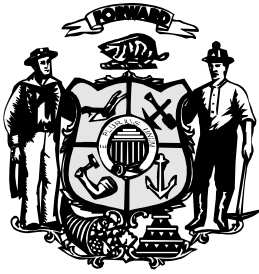
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 23, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud